

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I thank you for your anticipated cooperation.

Lee

to obtain a more comprehensive picture of the pesticidal products Growth Products has manufactured and then distributed/sold, I am requesting that you/your client provide us with information concerning those products listed below (the names of these products were obtained from Growth Products' website). The information EPA specifically is seeking for each of these products consists of the following:

- 1) The intended use of each of these formulated products;
- 2) The ingredients in each of these products, including the associated Chemical Abstracts Service Registry Numbers, as applicable (and if any such ingredient includes a generic name, such as "plant extract" or "amino acids," EPA requests that such ingredient be described with greater specificity to allow for precise identification, such as identifying which particular extract(s) from which plant(s) the ingredient(s) was/were derived or which specific amino acid(s) was used in the manufacture of the product), as well as the type of extract (aqueous or organic);
- 3) The percentage (by weight) of each of the ingredients (constituents) of each such product and the specific purpose of each ingredient in the formulation (*i.e.* whether each such ingredient is included as a diluent, solvent, plant regulator or otherwise);
- 4) Whether each of these products is still in production and is still being offered for distribution and sale; and
- 5) If any of the products is in fact still being produced and marketed, then we ask that you provide a label for it (we would prefer electronically to receive a PDF version of the label prior to the meeting).

These are the products in question:



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Spielmann, Lee

From: Spielmann, Lee
Sent: Thursday, April 11, 2019 4:09 PM
To: 'Lyons, Francis'
Subject: Growth Products: re April 16th meeting

Frank,

Thank you for your recent message and the information it contains. EPA too is looking forward to the meeting set to start on Tuesday, April 16th, at 1 PM. The meeting will be held in the New York City office of EPA, located at 290 Broadway (between Duane and Reade Streets, two blocks north of City Hall in lower Manhattan), in room 1721.

There is a call-in number: [REDACTED] in case there is any problem with the conference call number (unlikely, though it may be), the number of the landline in the room in which we will be meeting is **212-637-3097**.

On behalf of EPA, the following people will be attending (besides me, assistant regional counsel, Waste & Toxic Substances Branch [WTS], Office of Regional Counsel [ORC], EPA, Region 2):

Naomi Shapiro, a team leader in WTS, ORC, EPA, Region 2

Michael Brannick, Life Scientist, in the Pesticides & Toxic Substances Branch of the Division of Enforcement & Compliance Assistance, EPA, Region 2

Jeannine Kausch, Product Manager (Microbial Pesticides), of the Biopesticides & Pollution Prevention Division, Microbial Pesticides Branch, EPA

Russell Jones, Senior Scientist, Risk Assessment Branch of the Biopesticides & Pollution Prevention Division of the Office of Pesticides Program

Note that Jeannine Kausch and Russell Jones will be participating in the meeting through video-conferencing; Jeannine is based in Washington, DC, and Russell in Arlington, Virginia.

In addition, I wish to raise an additional matter in an effort to make our discussion a more substantively productive one. A central and overriding concern of EPA's is to ensure full compliance with applicable FIFRA requirements, and in furtherance of that objective I refer you to the third paragraph of EPA's February 19, 2019 letter, which stated:

In the course of its investigation, EPA became aware of Growth Product's production and offer for sale and distribution of three additional products that are unregistered pesticides: (1) SAR [Systemic Acquired Resistance] Activator SA; (2) Sil-Guard 0-2-5; and (3) TKO Phosphite 0-29-26. As with the five pesticides discussed in the prior paragraph, each instance of sale or distribution of any of these pesticides constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Further investigation has revealed a [REDACTED] that Growth Products produces and then distributes/sells about which EPA has some concerns, and we are looking to confirm that these products are indeed subject to FIFRA registration. Therefore, to facilitate the discussion at the meeting, and in effort for EPA

1. Introduction
The purpose of this study is to investigate the effects of the proposed system on the performance of the participants.

2. Method
The study was conducted using a between-subjects design with two groups of participants.

3. Results
The results of the study show that the proposed system significantly improved the performance of the participants in the experimental group compared to the control group.

4. Conclusion
The study concludes that the proposed system is effective in improving the performance of the participants.

5. References
The following references were consulted during the preparation of this study:

6. Appendix
The following appendix contains the data collected during the study:
- Appendix A: Raw data
- Appendix B: Summary statistics
- Appendix C: Graphs and charts

7. Index
The following index lists the pages of the document:
- Introduction: 1-2
- Method: 3-4
- Results: 5-6
- Conclusion: 7
- References: 8-9
- Appendix: 10-12
- Index: 13

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

moved

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

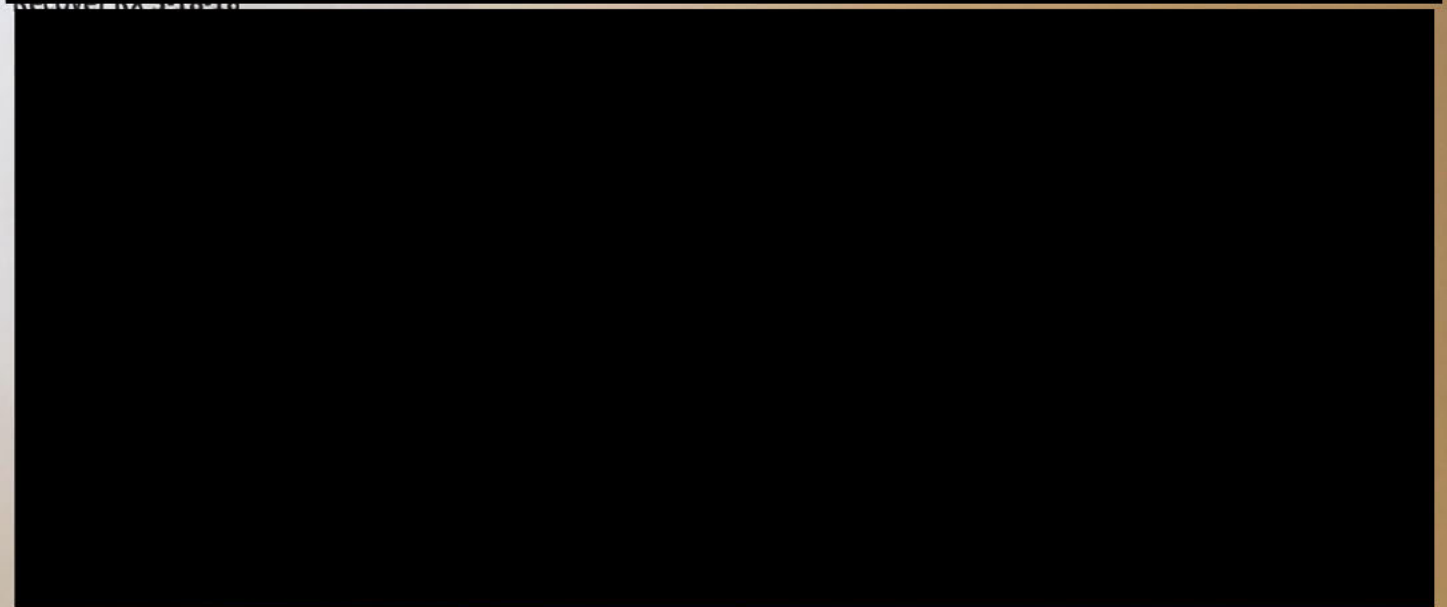
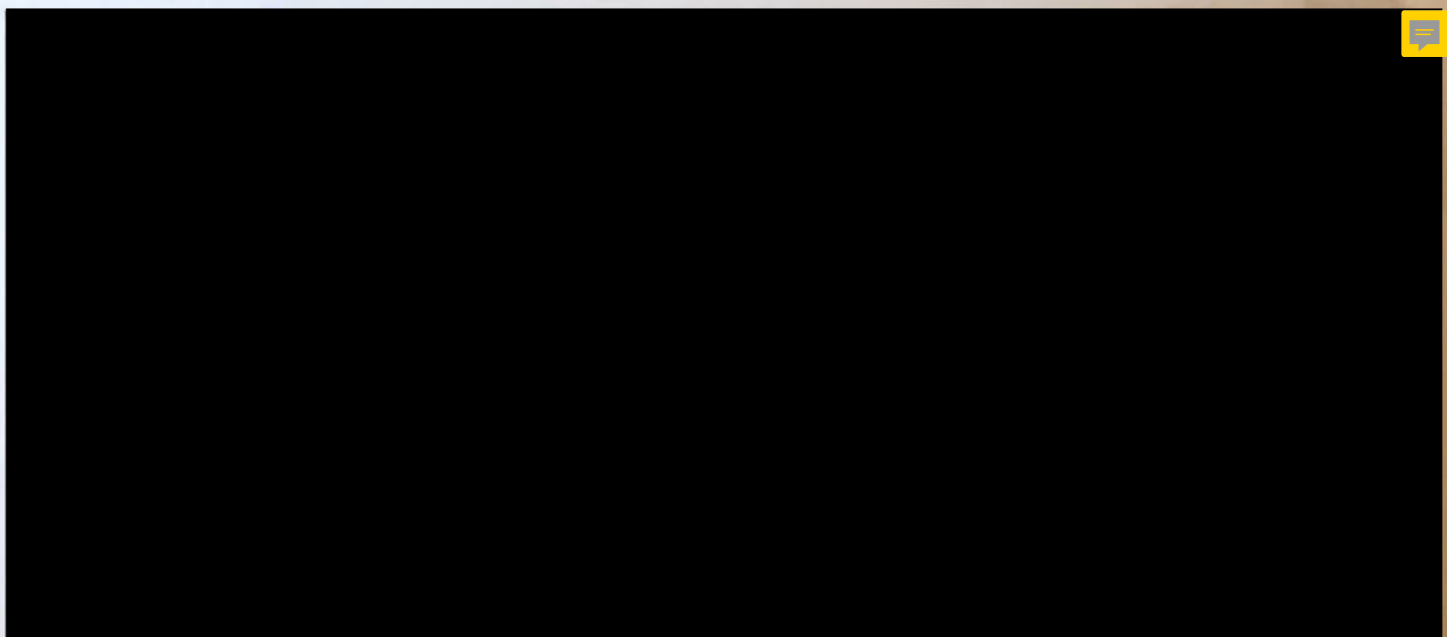
(removed)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Spielmann, Lee

From: Spielmann, Lee
Sent: Thursday, May 09, 2019 5:39 PM
To: Lyons, Francis; 'Ajax, Caitlin'
Subject: FW: Growth Products response
Attachments: Essential 1-0-1 (2).pdf; Essential 1-0-1 (3).pdf; Essential 1-0-1.pdf; Green Speed (2).pdf; Green Speed.pdf; Recover Rx (2).pdf; Recover Rx (3).pdf; Recover Rx.pdf; SiTKO SA (2).pdf; SiTKO SA.pdf; TKO 0-0-26 (2).pdf; TKO 0-0-26 (3).pdf; TKO 0-0-26 (4).pdf; TKO 0-0-26 (5).pdf; TKO 0-0-26.pdf; TKO 0-29-26.pdf

Frank/Caitlin:

Thank you for the information provided in your May 7th e-mail. Below and attached above are the items requested by Growth Products during and/or subsequent to our April 16th meeting:

- (1) Labels for the products EPA identified in the February 19th letter --- attached are all the labels which were collected during the 2016 inspection;
- (2) Labels for the products EPA identified in the April 11th e-mail, which was based upon a review of the company website conducted in 2015; that review identified products that made pesticide claims and/or contained potential pesticide substances. Please note that the original links to the claims below were added, and, if there were ingredient concerns these were indicated with a bullet point;
- (3) Links to online marketing materials; this was a mix of links from the 2015 website review and the other information EPA obtained after the 2016 inspection. They are added as links below, organized by product.

Please note the following: (a) Links that remain active have been highlighted below; (b) If a link led to an "error page," it has been marked as "link broken"; and (c) If a link led to the Growth Products website but the page had been wiped clean, it has been marked "removed."

In addition, your e-mail of May 7th (12:52 PM) asked us to specify a particular time range for the information EPA is seeking concerning the percentage of product sales for each product. We are requesting the percentages of sales for these products for the years 2014-2018.

One last point. As was discussed during the April 16th meeting, I wish to emphasize that EPA attaches the highest priority to FIFRA compliance, specifically that if a product subject to FIFRA regulation does not comply with applicable FIFRA requirements, then the sale/distribution of such product be halted and that it be recalled from the market, whether the particular violation is of FIFRA Section 12(a)(1)(A), Section 12(a)(1)(C) or otherwise.

Once you have had an opportunity to review and analyze the information above and the links below, I think it might make sense for another "meeting" to be held.

Spielmann, Lee

From: Spielmann, Lee
Sent: Wednesday, May 22, 2019 5:53 PM
To: Lyons, Francis; Ajax, Caitlin
Subject: Growth Products

Frank/Caitlin:

Hope all finds you well.

Now that you have had an opportunity to review the information I sent on May 9th, I would like to revisit the issue of settlement. To that end, I propose that the parties hold another settlement conference sometime in June or July (I will be out of the office from June 24th through July 10th). Given the information that has been exchanged between EPA and Growth Products, I think that the situation is such that we can begin to speak in concrete settlement terms.

While of course if you wish to come to New York we could hold a face-to-face meeting, I understand the logistics and would be amenable to a phone discussion.

Let me know when you think you and your client (if they wish to attend) would be available; based on the substance of our prior meeting, I am, of course, presuming we are all on the same page as to the need for another settlement conference.

Thank you, and best wishes for a Memorial Day weekend.

Lee

Spielmann, Lee

From: Spielmann, Lee
Sent: Wednesday, August 07, 2019 6:53 PM
To: Lyons, Francis
Cc: Ajax, Caitlin
Subject: RE: EPA-Growth Products meeting

I was thinking that we would essentially pick-up from where things were left off when we met in April, with our revisiting the issues of potential penalty and compliance with regard to the alleged violations set forth in the February 19th letter, as impacted by the documentation you submitted on July 9th. I anticipate that we will discuss each of those documents and whether they demonstrate that a violation did not occur (or fail to do so).

I was not anticipating preparing a formal agenda, but I am still mulling that over. My sense is that the meeting time will be most productive if we primarily focus be on the documents you submitted and what they show (or do not show), and what, if anything, must still occur for the company to attain full FIFRA compliance.

While I am hoping that we can agree, generally speaking, on the basic parameters of any eventual settlement, I do not realistically expect that we will conclude the meeting with an actual settlement, at least with regard to penalty amount. But at the least the parties should know by the end of the meeting where each stands regarding potential penalty and any outstanding compliance issues. And, of course, that this meeting does not mark the end of our negotiations, but instead the start of the process that will conclude in a mutually agreed-upon settlement.

Lee

From: Lyons, Francis <FLyons@schiffhardin.com>
Sent: Monday, August 05, 2019 1:59 PM
To: Spielmann, Lee <Spielmann.Lee@epa.gov>
Cc: Ajax, Caitlin <CAjax@schiffhardin.com>
Subject: RE: EPA-Growth Products meeting

Lee,

Do you have any specific agenda items for our upcoming meeting, or ideas on how you would like things to proceed? Do you anticipate sending a formal agenda?

Thank you,

Frank

Francis X. Lyons

Partner

flyons@schiffhardin.com

d +1.312.258.5661 | f +1.312.258.5600

Schiff Hardin LLP

233 South Wacker Drive | Suite 7100 | Chicago, IL 60606

schiffhardin.com | v-card | view bio

Spielmann, Lee

From: Spielmann, Lee
Sent: Wednesday, August 14, 2019 7:33 PM
To: 'Lyons, Francis'
Subject: Growth Products
Attachments: growth products attendance08142019.pdf

Frank,

It was nice seeing you again, and thank you for coming to New York for the conference. I hope your return to Chicago was safe and uneventful.

Attached please find a copy of the attendance sheet for today's meeting.

An additional matter I wish to bring up now, one that I had omitted discussing at the end of the meeting; I had alluded to this concern in my opening statement. With regard to the two biological fungicides referenced in EPA's February 19, 2019 letter (Companion Liquid Biological Fungicide, EPA Reg. # 94485-1 ["CLBF"]; and Companion Biological Fungicide Wettable Powder, EPA Reg. # 94485-2 ["CBFWP"]), please answer the following:

- 1) What is the quantity of the stock of each of these fungicides that Plant Health Intermediates Inc. (PHI) presently possesses?
- 2) What does PHI intend to do with the stocks of each of these fungicides? In both May 6, 2019 and July 10, 2019 "Voluntary Cancellation" letters of Matthew Brooks to Jeannine Kausch, it states that PHI is "requesting 18 months from the date of cancellation to sell off existing stocks of the product." Does PHI still intend to sell the stocks of each of these fungicides?
- 3) EPA's February 19th letter discusses these two fungicides. [REDACTED] es an EPA Reg. # [REDACTED] the letter indicates [REDACTED] Please confirm that the May 6th and July 10th letters refer to the same fungicides as identified in EPA's February 19th letter.

The February 19th letter states (page 2) states, with regard to each of CLBF and CBFWP, "The composition of each of these pesticides made and sold by Respondent differs from the composition described as part of each's registration in that the active ingredient used was sourced differently than as specified in the Confidential Statement of Formula." Section 12(a)(1)(C) of FIFRA makes it unlawful to distribute or sell "any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under" Section 3 of FIFRA.

The bottom line is that neither CLBF nor CBFWP can [REDACTED]

If, however, PHI does decide to dispose of these fungicides, we ask that you provide the following additional information:

- 1) Over what time period would full disposal occur?
- 2) How would such disposal be effected?

I look forward to further negotiations with you in an effort to resolve this through settlement. Once you send me the materials as discussed today, I will move on them forthwith in order to expedite Agency consideration. Thank you.

Attached please find a copy of the attendance sheet for today's meeting.

An additional matter I wish to bring up now, one that I had omitted discussing at the end of the meeting; I had alluded to this concern in my opening statement. With regard to the two biological fungicides referenced in EPA's February 19, 2019 letter (**Companion Liquid Biological Fungicide, EPA Reg. # 94485-1 ["CLBF"]**; and **Companion Biological Fungicide Wettable Powder, EPA Reg. # 94485-2 ["CBFWP"]**), please answer the following:

- 1) What is the quantity of the stock of each of these fungicides that Plant Health Intermediates Inc. (PHI) presently possesses?
- 2) What does PHI intend to do with the stocks of each of these fungicides? In both May 6, 2019 and July 10, 2019 "Voluntary Cancellation" letters of Matthew Brooks to Jeannine Kausch, it states that PHI is "requesting 18 months from the date of cancellation to sell off existing stocks of the product." Does PHI still intend to sell the stocks of each of these fungicides?
- 3) [REDACTED] Please confirm [REDACTED] letters refer to the same fungicides as identified in EPA's February 19th letter.

The February 19th letter states (page 2) states, with regard to each of CLBF and CBFWP, "The composition of each of these pesticides made and sold by Respondent differs from the composition described as part of each's registration in that the active ingredient used was sourced differently than as specified in the Confidential Statement of Formula." Section 12(a)(1)(C) of FIFRA makes it unlawful to distribute or sell "any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under" Section 3 of FIFRA.

The bottom line is that neither CLBF nor CBFWP can

If, however, PHI does decide to dispose of these fungicides, we ask that you provide the following additional information:

- 1) Over what time period would full disposal occur?
- 2) How would such disposal be effected?

I look forward to further negotiations with you in an effort to resolve this through settlement. Once you send me the materials as discussed today, I will move on them forthwith in order to expedite Agency consideration. Thank you.

Lee

This message and any attachments may contain confidential information protected by the attorney-client or other privilege. If you believe that it has been sent to you in error, please reply to the sender that you received the message in error. Then delete it. Thank you.

Spielmann, Lee

From: Spielmann, Lee
Sent: Wednesday, August 28, 2019 7:25 PM
To: Lyons, Francis
Cc: Dickinson, Gregory
Subject: RE: Growth Products

Thank you. I am hoping to send you shortly, as you had requested at our recent meeting, a brief narrative as to how EPA derived the settlement numbers we discussed.

Lee

From: Lyons, Francis <FLyons@schiffhardin.com>
Sent: Tuesday, August 27, 2019 5:29 PM
To: Spielmann, Lee <Spielmann.Lee@epa.gov>
Cc: Dickinson, Gregory <GDickinson@schiffhardin.com>
Subject: RE: Growth Products

Lee,

We are preparing a written follow up comprehensive response regarding issues discussed at the meeting, which will include a response to the below. We expect to provide that to you in advance of the September 14 date that we discussed at the meeting.

Regards,

Frank

Francis X. Lyons

Partner

flyons@schiffhardin.com

d +1.312.258.5661 | f +1.312.258.5600

Schiff Hardin LLP

233 South Wacker Drive | Suite 7100 | Chicago, IL 60606

schiffhardin.com | [v-card](#) | [view bio](#)

From: Spielmann, Lee [<mailto:Spielmann.Lee@epa.gov>]
Sent: Wednesday, August 14, 2019 6:33 PM
To: Lyons, Francis <FLyons@schiffhardin.com>
Subject: [EXT] Growth Products

Frank,

It was nice seeing you again, and thank you for coming to New York for the conference. I hope your return to Chicago was safe and uneventful.

Spielmann, Lee

From: Spielmann, Lee
Sent: Monday, September 16, 2019 5:21 PM
To: Dickinson, Gregory
Cc: Lyons, Francis
Subject: RE: September 13th, 2019 Submittal

Thank you for your letter of September 13th. It is currently being reviewed.

I anticipate shortly providing you with a summary write-up re possible penalty assessments.

Lee

From: Dickinson, Gregory <GDickinson@schiffhardin.com>
Sent: Friday, September 13, 2019 11:54 AM
To: Spielmann, Lee <Spielmann.Lee@epa.gov>
Cc: Lyons, Francis <FLyons@schiffhardin.com>
Subject: September 13th, 2019 Submittal

Good morning, Lee,

Please see the attached letter.

Best,
Greg

Gregory Dickinson

Associate
gdickinson@schiffhardin.com
d +1.312.258.5641 | f +1.312.258.5600

Schiff Hardin LLP
233 South Wacker Drive | Suite 7100 | Chicago, IL 60606
schiffhardin.com | v-card | view bio

This message and any attachments may contain confidential information protected by the attorney-client or other privilege. If you believe that it has been sent to you in error, please reply to the sender that you received the message in error. Then delete it. Thank you.

Cc: Dickinson, Gregory <GDickinson@schiffhardin.com>
Subject: RE: Penalty Calculation

Lee,

When do you expect to provide the information regarding the government's penalty calculation?

Frank

Francis X. Lyons

Partner

flyons@schiffhardin.com

d +1.312.258.5661 | f +1.312.258.5600

Schiff Hardin LLP

233 South Wacker Drive | Suite 7100 | Chicago, IL 60606

schiffhardin.com | [v-card](#) | [view bio](#)

From: Spielmann, Lee [<mailto:Spielmann.Lee@epa.gov>]

Sent: Monday, September 16, 2019 4:21 PM

To: Dickinson, Gregory <GDickinson@schiffhardin.com>

Cc: Lyons, Francis <FLyons@schiffhardin.com>

Subject: [EXT] RE: September 13th, 2019 Submittal

Thank you for your letter of September 13th. It is currently being reviewed.

I anticipate shortly providing you with a summary write-up re possible penalty assessments.

Lee

From: Dickinson, Gregory <GDickinson@schiffhardin.com>

Sent: Friday, September 13, 2019 11:54 AM

To: Spielmann, Lee <Spielmann.Lee@epa.gov>

Cc: Lyons, Francis <FLyons@schiffhardin.com>

Subject: September 13th, 2019 Submittal

Good morning, Lee,

Please see the attached letter.

Best,
Greg

Gregory Dickinson

Associate

gdickinson@schiffhardin.com

d +1.312.258.5641 | f +1.312.258.5600

Schiff Hardin LLP

Spielmann, Lee

From: Spielmann, Lee
Sent: Thursday, September 26, 2019 7:36 PM
To: Lyons, Francis
Cc: Dickinson, Gregory
Subject: RE: RE: Penalty Calculation

In response to your concern, we (essentially the people whom you met at our August settlement conference) will recommend and push for a settlement for [REDACTED] if the parties reach a settlement in principle within [REDACTED] days of your receipt of our penalty explanation, which I expect to [REDACTED] send to you within the next week. Two points to reiterate [REDACTED] both of which were conveyed at our meeting:

- 1) Any such settlement in principle is subject here at EPA to formal upper management approval; and
- 2) Any such settlement is contingent upon your client having attained full compliance with applicable FIFRA requirements.

Please let me know if you have any questions.

Please note that I will be off tomorrow (Friday, 9/27), Monday (9/30) and Tuesday (10/1).

Lee

From: Lyons, Francis <FLyons@schiffhardin.com>
Sent: Monday, September 23, 2019 9:02 PM
To: Spielmann, Lee <Spielmann.Lee@epa.gov>
Cc: Dickinson, Gregory <GDickinson@schiffhardin.com>
Subject: Re: RE: Penalty Calculation

Lee,

My concern is that the government set an end of months deadline for an agreement in principle and I fear we will be jammed for time through no fault of defendant, as I really need that information to develop a response on the penalty. Can you consider pushing back that deadline. I am not trying to delay, but wish for an opportunity for good faith discussions regarding the penalty. I appreciate your consideration.

Frank

Sent from my iPhone

On Sep 23, 2019, at 6:48 PM, Spielmann, Lee <Spielmann.Lee@epa.gov> wrote:

I am hoping very shortly. My apologies for the delay --- my time has very much been taken up with a discovery matter in federal court.

From: Lyons, Francis <FLyons@schiffhardin.com>
Sent: Monday, September 23, 2019 5:15 PM
To: Spielmann, Lee <Spielmann.Lee@epa.gov>

At the time of the Feb 2018 inspection, Respondent had not submitted a number of yearly production reports for the facility bearing FIFRA identification 71068-NY-1 for the years 2013, 2014, 2015 and 2016. Based on the size of business [REDACTED] and violation level assigned to this violation in Appendix A of the ERP (level [REDACTED]), the ERP assigns a penalty for any such separate failure/delayed submission a penalty of [REDACTED]. The applicable "Gravity Adjustment Criteria" found in Appendix B of the ERP (page 34) was then applied, with, as explained above, a gravity-adjustment value of [REDACTED] being assigned. In accordance with Table 3 of the ERP (page 20), this [REDACTED] amount was reduced [REDACTED] yielding a per-violation penalty assessment of [REDACTED]. Multiplying this amount by the number of violations uncovered yields a total penalty of [REDACTED] for these violations.

Determining the Total Penalty without Adjustments:

The sum of the three amounts listed above [REDACTED] This is then further increased, in accordance with EPA's January 15, 2018 civil penalties policy, by a factor of 1.14103, which then yields a total penalty of [REDACTED] (rounded off to [REDACTED]). This number represents one settlement option for EPA.

Determining the Total Penalty with Graduated Penalty Reductions (page 25, ERP):

The applicable guidance contemplates EPA having the discretion to implement an additional penalty amount reduction in accordance with the provisions of Table 4 of the ERP (page 25); this reduction would apply to the 241 [alleged] sales/distributions at issue in the first set of violations. For a category [REDACTED] size business, under this table, the [REDACTED] violations are assessed at [REDACTED] value, for the ensuing [REDACTED] violations, the penalty would be assessed at 25%, and for any violations beyond the [REDACTED] the penalty is assessed at [REDACTED]. Accordingly, for the following pesticides (more fully identified in EPA's February 19, 2019 letter), this would result in the following:

- 1) For the 135 sales/distributions of Recover Rx 3-18-18, the penalty amount would become [REDACTED]
- 2) For the 49 sales/distributions of Green-Speed Si 0-2-5, the penalty amount would become [REDACTED]
- 3) For the 30 sales/distributions of SITKO SA 0-7-17, the penalty amount would become [REDACTED]
- 4) For the 15 sales/distributions of TKO Phosphite 0-0-26, the penalty amount would become \$[REDACTED] and [REDACTED]

[footnote omitted]); (c) for "Environmental Harm," the value [redacted] was assigned ([redacted] footnote omitted); for "Compliance History," the value [redacted] was assigned ([redacted] footnote omitted); and (d) for "Culpability," the value [redacted] was assigned ([redacted] footnote omitted).

FIFRA Section 12(a)(1)(A) Violations (sale/distribution of unregistered pesticides):

These violations are based on invoices collected during the February 2018 inspection for sales of products in 2017. Based on the size of business [redacted] and violation level given for this violation in Appendix A of the ERP (page 29), [redacted] is [redacted] (page 19 of the ERP, Table 2, [redacted] in the February 19, 2019 letter, EPA determined there had been at least 12 incidents of separate sales in 2017 of Essential Plus, 30 of SITKO, 135 of Recover Rx, 49 of Green Speed, and 15 of TKO Phosphite. The applicable "Gravity Adjustment Criteria" found in Appendix B of the ERP (page 34) was then applied, using a gravity-adjustment value of [redacted]. In accordance with Table 3 of the ERP (page 20), this [redacted] amount was reduced by [redacted] yielding a per-violation penalty assessment of [redacted]. Multiplying this amount by the number of sales/distribution events yields a penalty for these violations of [redacted].

FIFRA Section 12(a)(1)(C) Violations (composition of registered pesticides):

EPA determined violations of Section 12(a)(1)(C) occurred based upon invoices collected during both inspections for sales of Companion Liquid Biological Fungicide (EPA Reg. # 71065-3;) and Companion Biological Fungicide Wettable Powder (EPA Reg. # 71065-4). Based on the size of business ([redacted]) and the violation level the ERP assigns to this type of violation (level [redacted] Appendix A of the ERP, page 29: [redacted]), the ERP assigns a penalty for any such separate sale/distribution of [redacted]. As noted in EPA's February 19th letter, we have to date uncovered at least 12 separate sales since 2014 involving this type of violation. The applicable "Gravity Adjustment Criteria" found in Appendix B of the ERP (page 34) was then applied, using a gravity-adjustment value of [redacted]. In accordance with Table 3 of the ERP (page 20), this [redacted] amount was reduced by [redacted] yielding a per-violation penalty assessment of [redacted]. Multiplying this amount by the number of violations uncovered for yields a total penalty of [redacted] for these violations.

FIFRA Section 12(a)(2)(L) Violations (failure to submit/notably late Section 7 reports):

Preliminarily, we wish to note that the February 19, 2019 EPA letter incorrectly listed the incidents discussed in this section as violative of FIFRA Section 12(a)(2)(N); it should correctly read FIFRA Section 12(a)(2)(L).

Spielmann, Lee

From: Spielmann, Lee
Sent: Thursday, October 31, 2019 5:22 PM
To: 'Lyons, Francis'
Cc: Dickinson, Gregory
Subject: "Growth Products" --- FOR SETTLEMENT PURPOSES ONLY
Attachments: growthproducts penalty10312019.pdf

Frank,

At our most recent meeting, you asked for a description as to how EPA developed the penalty numbers discussed. Per your request, attached please find a penalty narrative that explains those numbers.

EPA will consider settlement for the entire matter (as discussed during the meeting) for the [REDACTED] amount provided your client certifies that its sale/distributions of pesticide and its related operations are in applica [REDACTED] FIFRA compliance and, further, that it has instituted steps that might ensure it maintains such compliance. This offer to settle remains viable for [REDACTED] (i.e. through [REDACTED]).

One other point I wish to reiterate. As I stated during the settlement conference, this offer remains tentative unless and until formal upper management approval has been secured. While no such approval has to date been sought, we (those EPA representatives who attended our settlement conference in the summer) are confident that such approval would be forthcoming.

Please do not hesitate to contact me (e-mail or at 212-637-3222) if you have any questions. Once you and your client have reviewed the attached, let us resume our negotiations so that we can attempt to effect the settlement agreement that both parties stated at the meeting was their hoped-for goal.

Best regards,

Lee